

**MINUTES
of the
FIFTH MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**October 5, 2015
State Capitol, Room 322
Santa Fe**

The fifth meeting of the Indian Affairs Committee (IAC), a joint meeting with the Legislative Health and Human Services Committee (LHHS), was called to order by LHHS Chair Senator Gerald Ortiz y Pino on Monday, October 5, 2015, at 8:45 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Sharon Clahchischilliage, Co-Chair
Sen. John Pinto, Co-Chair
Sen. Ted Barela
Rep. James Roger Madalena
Sen. Richard C. Martinez
Sen. Nancy Rodriguez
Rep. James E. Smith
Sen. William P. Soules

Absent

Rep. Zachary J. Cook
Rep. Yvette Herrell
Rep. D. Wonda Johnson
Rep. Georgene Louis
Sen. Cliff R. Pirtle
Sen. John C. Ryan
Sen. Benny Shendo, Jr.

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Cisco McSorley
Rep. Debbie A. Rodella
Rep. Nick L. Salazar

Sen. Carlos R. Cisneros
Sen. Stuart Ingle
Sen. Daniel A. Ivey-Soto
Rep. Patricia A. Lundstrom
Sen. George K. Munoz
Rep. Patricia Roybal Caballero
Sen. Clemente Sanchez

Staff

Peter Kovnat, Staff Attorney, Legislative Council Service (LCS)
Michael Hely, Staff Attorney, LCS
Shawn Mathis, Staff Attorney, LCS
Nancy Ellis, LCS
Diego Jimenez, LCS
Erin Bond, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Monday, October 5**Welcome and Introductions**

Senator Ortiz y Pino introduced his vice chair, Representative Nora Espinoza, and the co-chairs of the IAC, Representative Clahchischilliage and Senator Pinto, and asked members of both committees and staff to introduce themselves.

Tribal Employers and the Federal Large Employer Mandate

Rachel Sibila, who is pursuing a law degree and a master's degree in health administration at the University of Oklahoma, described a study that she conducted during her second year of law school titled, "Play or Pay: Interpreting the Employer Mandate of the Patient Protection and Affordable Care Act as it Relates to Tribal Employers" (see handout). In that report, Ms. Sibila explored the many ambiguities among federal statute, Indian treaty rights and judicial interpretations of requirements of the federal Patient Protection and Affordable Care Act (ACA). Certain provisions of the ACA expressly exempt Native Americans, but the employer mandate to provide insurance does not carve out Native American employers, she said. There currently is a split among the federal circuit courts regarding legislative intent, Ms. Sibila said, so clarification by the U.S. Congress or the U.S. Supreme Court is going to be necessary.

On questioning, members of the committees and Ms. Sibila discussed the following issues:

- the effects of tribal coverage of insurance premiums;
- the assumption that tribes with casinos have greater resources than those without;
- Indian Health Service (IHS) concerns about which mandates apply; and
- confusion about coverage for non-Native American employees of a Native American employer.

Health Update from the Pueblo of Santa Clara

J. Michael Chavarria, governor of the Pueblo of Santa Clara, presented a comprehensive outline of accomplishments and challenges that face the Pueblo of Santa Clara, and he emphasized the need to work together with state agencies and others to craft new solutions. Governor Chavarria referred to a community health profile conducted by the pueblo in 2007, with alcohol and substance abuse identified as major issues. The need for transitional-living facilities remains a top priority for the pueblo, he said. Last year's joint application to the IHS from five northern pueblos seeking construction of a large regional health care facility did not get

funding, Governor Chavarria said, but the pueblos will continue to seek other resources to build this needed facility.

Issues with managed care organizations (MCOs) continue, Governor Chavarria said, as health risk assessments (HRAs) are not being completed for Native Americans enrolled in the state's Medicaid program, community health workers are not being included in meetings with care coordinators and quarterly reporting requirements to Native Americans are not being completed. The Pueblo of Santa Clara is also very concerned with new work requirements for the state's Supplemental Nutrition Assistance Program (SNAP), he stated. The Human Services Department (HSD) and the United States Department of Agriculture have a duty to ensure that SNAP is responsive to the needs of Native American participants (approximately 80,000 in New Mexico), and a tribal consultation is scheduled for October 16 at the Pueblo of Zuni.

Senior citizen programs, funded through state and federal agencies, are highly valued at the Pueblo of Santa Clara, Governor Chavarria said, and the pueblo's 2016 capital outlay request includes renovations, equipment and vehicle purchases. The Santa Clara Regional Adult Day Care Center (SCRADCC) program serves adults with special needs, both Native American and non-Native American, and the pueblo is seeking additional funding for staff, transportation and operation and maintenance. He objected to the state using \$2 million from the Tribal Infrastructure Project Fund (TIF) to pay for non-Indian water users in the Taos water rights settlement at a time when there is great need for upgrading existing water infrastructure. He also noted that the delay in processing intergovernmental agreements (IGAs) has negatively affected many projects, and he asked that a performance period not begin until an IGA has been fully executed. State action also has been lagging with joint pueblo applications for federal funds following devastating impacts to the pueblo from the Las Conchas fire.

On questioning, members of the committees and Governor Chavarria discussed the following issues:

- effects of lost oil and gas tax revenue on tribal infrastructure and water projects;
- pros and cons of the state's use of TIF funds for the Taos water rights settlement;
- incomplete data from MCOs on Native American enrollments; and
- efforts to seek SCRADCC funding from additional sources.

Members of both committees approved motions to send a letter to the Aging and Long-Term Services Department seeking more funding for the SCRADCC and asking why the center's appropriation does not recur annually; and a letter to the HSD, copied to the Legislative Finance Committee, inquiring about the MCOs' lack of completed HRAs for Native Americans and details of how care is being coordinated for these individuals.

Task Force Report on Breastfeeding in Indian Communities

Lucinda Cowboy, tribal coordinator for the New Mexico Breastfeeding Task Force, described the health and bonding advantages of breastfeeding, including cost savings to families

of an estimated \$1,500 a year. Native American mothers start out breastfeeding at a rate of 92 percent, but those numbers drop off quickly as they return to work or do not get the support that they need to continue, Ms. Cowboy said. The goal of the nonprofit task force is to provide support for new mothers through education, advocacy and partnering with community resources. Ms. Cowboy described coordinated efforts in the pueblos and the Navajo Nation, and she urged increased funding for peer counselors, better education for employers and support for expanded family leave policies. The IHS has been a leader in baby-friendly hospitals that support breastfeeding, she said.

Diné Food Sovereignty Alliance

Gloria Ann Begay, project manager of the Diné Food Sovereignty Alliance, and Noreen Kelly, a project volunteer, described the two percent tribal tax on unhealthy foods vetoed by the previous Navajo Nation president but supported by current President Russell Begay and signed into law in 2014. Ms. Begay, a retired educator who now works as an advocate, said there is a scarcity of healthy foods in stores in the Navajo Nation, as well as a lack of jobs, housing, access to services and transportation (see handout). In the Navajo culture, living well is interconnected with food and language, Ms. Kelly explained. Health disparities drove this tax initiative, and environmental issues continue to challenge, with 70 percent of Navajo farmlands currently idle due to lack of water or to contamination. Backyard gardening in residential areas is supposed to be against the law in many areas in the Navajo Nation, she said, but some individuals are gardening in residential areas, and their children now are starting to understand where food actually comes from. Traditional foods, plants and remedies are being restored. Fresh food distribution is very challenging on the huge reservation. Ms. Kelly noted that data from the recent Colorado Gold Mine spill are hard to come by, but she does not believe that there is no residual contamination.

Junk Food Taxation

Revenue from the Navajo Nation tax on certain "unhealthy foods" is being placed into a community wellness development fund, according to Moroni Benally, director of the Diné Policy Institute, with \$300,000 raised after just the first quarter. Administration of the tax and retailer interpretation is a complex matter (see handout), with definitions of "healthy" food sometimes difficult to pinpoint. SNAP recipients are not subject to the tax, he noted, and they are in a group reported to have some of the worst eating habits. The tax dollars raised go to all chapters and are disbursed based on per capita population; each community is to design its own wellness project under strict legal guidelines. Reduced rates of diabetes and obesity will signal success of the effort.

Care Coordination at Kewa Pueblo

Marcia Clark, chief executive officer of the Kewa Pueblo Health Corporation, provided her perspective on Centennial Care and its four MCOs, whose services include physical health, behavioral health and long-term care and community benefits (see handout). Ms. Clark reminded members of the committees that New Mexico's tribes had strenuously opposed the state's Medicaid waiver that included mandatory enrollment of all Native Americans into managed care.

Ultimately, the federal Centers for Medicare and Medicaid Services (CMS) agreed with the tribes, allowing enrollment to be optional, except for those needing nursing facility level of care and those who are dually eligible; individuals in these latter groups would be required to enroll in managed care. Ms. Clark detailed the MCOs' community benefit meant to help keep individuals in their homes, but she asserted that services and coordination are so lacking as to be detrimental to their care. Citing quarterly reports from all four MCOs indicating that more than one-half of Native American enrollees had not completed the HRA to determine their needed levels of care coordination, she asserted that the state's lack of concern about these figures was troubling for taxpayers as well: Native Americans in long-term care are considered high-risk, and MCOs are receiving the highest capitated rate of \$3,700 a month, 2.7 times the annual income level of a single Medicaid recipient.

Ending her presentation with what she termed a positive note, Ms. Clark said that the CMS is moving in the direction of changing regulations for Native Americans, and soon New Mexico will no longer be able to argue that it is necessary to enroll Native Americans in managed care. At that time, there will be increased opportunities for facilities such as her own to address long-term care and improved care coordination for Native American members.

Recess

There being no more business before the committees, the LHHS meeting was recessed and the IAC meeting was adjourned at 3:25 p.m.